IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 45/2006

Shri Navlo Kasturo and others. ..... Appellants.

Vs.

Shri Adam Khan. ..... Respondent.

Mr. N.K. Sawaikar, Advocate for the appellants.

Mr. P.S. Rao, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 20th November, 2006.

P.C.

Heard learned Counsel for both the parties. Perused the record.

2. The unsuccessful defendants in Regular Civil Suit No. 106/2004 have preferred this appeal against the Judgment and Order passed by the Additional District Judge, South Goa, Margao, who dismissed the appeal, confirming the Judgment and Order passed by the trial Court, granting perpetual injunction against the appellants-defendants.

3. The plaintiff-respondent filed a suit for perpetual injunction and consequential reliefs against the present appellants on the allegation that the plaintiff who is brother of late Haroon Khan and son of late Abdul Khan and the heirs of late Haroon Khan were owners in possession of the property known as “Folvamollo”, “Foleyeramola” and “Tolem” which was granted under Alvara De Conceicao i.e. Aforamento and surveyed under Nos. 8, 9 and 10 situated at Potem, Sanguem Taluka, which land was granted on aforamento basis on 20.1.1943. They developed the entire property with the help of labourers and planted cashew trees and other trees and also brought under cultivation for cereals. On 1.5.1998, the defendants along with 40 unknown persons committed trespass for the first time and obstructed the labourers of the plaintiff and used criminal force, as a result of which, the suit came to be filed for perpetual injunction. The defendants contested the suit, inter alia, denying the allegations made by the plaintiff and submitting that they were in cultivatory possession of the entire property surveyed under No.9 as tenants and were residing in the houses for over 50 years, which are situated in the suit property and sought dismissal of the suit.

4. The learned trial Jude, after recording the evidence and on the basis of the arguments before him, came to the conclusion that the

plaintiff had proved that the land was in the names of Haroon Khan and Adam Khan and the portion of the land which is surveyed under No.9 was used by the plaintiff for raising seasonal crop and was in their lawful possession, cultivation and enjoyment. It was further held that the plaintiff had proved the unlawful activity alleged on behalf of the defendants. It was further held that the defendants failed to prove that they were protected tenants of the suit land and, therefore, the Court had no jurisdiction to entertain and try the suit and, therefore, the suit came to be decreed. The appeal was carried to the District Court. The learned lower appellate Court Judge, after hearing both the parties, concurred with the findings recorded by the trial Judge and dismissed the appeal and hence, the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned Counsel for the appellant brought to my notice the order passed by the Mamlatdar in case No.JT/II/TNC/DECL/3/2001 and others wherein it was held that the land in question belonged to the Government and it attracted Section 56 of the Agricultural Tenancy Act, 1964 and finally the application came to be disposed of for want of jurisdiction. Evidently, this order had not come at the trial stage, but came for the first time in the course of the

appeal and it was brought to the notice of the lower appellate Court. However, the learned appellate Court Judge appears to have properly dealt with the new argument advanced before her, holding that the argument about the question of ownership would not arise. On perusal of the plaint also, it is an evident position that the plaintiff is grantee of the property in question, and is found to be in lawful possession. Further the evidence on record shows that their possession was obstructed by the defendants who had no right, title or interest in the suit property. My attention was also invited to the provision of Section 56 of the Agricultural Tenancy Act. However, it is needless to mention that the said provision is not attracted at all in view of the factual matrix involved in this dispute. Under the circumstances, I do not see any reason as to why the so called substantial questions of law sought to be raised should be given second thought as they do not appear to be questions of law, leave aside the substantial questions of law.

6. In the result, the appeal has no merit and the concurrent reasons recorded by both the Courts below are seen to be just, legal and proper and hence it would book no interference. In the circumstances, the appeal stands dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.